

AF-5443(jrm)WAF
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BARBARA SCHULTZ,

Index No: 17-CV-8917

Plaintiff,

- against -

VERIFIED ANSWER

MARTIN CHEN,

Defendant.
-----X

C O U N S E L:

Defendant, MARTIN CHEN, by his attorneys, DeCICCO, GIBBONS & McNAMARA, P.C., answering the Complaint of the plaintiff herein, respectfully alleges:

AS TO THE PREAMBLE

FIRST: Denies knowledge or information sufficient to form an opinion or belief as to those allegations contained in the paragraph designated "1" of the Complaint.

AS TO JURISDICTION AND VENUE

SECOND: Denies knowledge or information sufficient to form an opinion or belief as to those allegations contained in the paragraphs designated "3" and "4" of the Complaint.

AS TO THE FIRST CAUSE OF ACTION

THIRD: Denies knowledge or information sufficient to form an opinion or belief as to those allegations contained in the paragraphs designated "13" and "14" of the Complaint.

FOURTH: Denies each and every allegation contained in the paragraphs designated "11", "15", "16", "17", "18", "19" and "20" of the Complaint.

FIFTH: Denies each and every allegation contained in paragraph designated "12" of the Complaint, and begs leave to refer all questions of law and fact to the Court at the trial of the action.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

SIXTH: If injuries and damages were sustained by the plaintiff at the time and place and in the manner alleged in the Complaint, such injuries and damages are attributable, in whole or in part, to the culpable conduct of the plaintiff.

SEVENTH: If any damages are recoverable against the defendant, the amount of such damages shall be diminished in the proportion which the culpable conduct attributable to the plaintiff bears to the culpable conduct, if any, of the defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

EIGHTH: The plaintiff failed to avail herself of seat belts, shoulder harnesses and other safety devices, thereby causing or aggravating the injuries alleged.

NINTH: The answering defendant demands that damages, if any, be reduced by a proportionate amount attributable to those injuries caused or aggravated by the plaintiff's failure to use seat belts, shoulder harnesses and other safety devices.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

TENTH: The causes of action alleged in the Complaint are barred by the provisions of the Comprehensive Automobile Insurance Reparation Act of the State of New York.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

ELEVENTH: Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiff for medical care, dental care, custodial care of rehabilitative services, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source as defined in Section 4545(c) of the New York Civil Practice Law and Rules.

TWELFTH: If any damages are recoverable against the answering defendant, the amount of such damages shall be diminished by the amount of the funds which plaintiff has or shall receive from such collateral source.

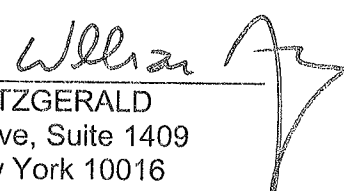
WHEREFORE, the defendant, MARTIN CHEN, demands judgment dismissing the Complaint, together with the costs and disbursements of this action.

Dated: New York, New York
December 14, 2017

Yours, etc.

DeCICCO, GIBBONS & McNAMARA, P.C.
Attorneys for Defendant

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